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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/853,196	05/11/2001	Richard Stanley Hajdukiewicz	7056.032	5888

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EXAMINER

RUHL, DENNIS WILLIAM

ART UNIT	PAPER NUMBER
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3629

DATE MAILED: 10/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

09/853,196

Applicant(s)

HAJDUKIEWICZ ET AL.

Examiner

Dennis Ruhl

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-114 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-114 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

1. The abstract of the disclosure is objected to because it is more than one paragraph in length. Correction is required. See MPEP § 608.01(b).
2. The disclosure is objected to because of the following informalities: The continuing data on page 1 is not clear because no application number has been identified. The examiner cannot ascertain the filing date of this application because the examiner cannot refer to the unknown application number to check for support. The continuity data must be updated and positively identify the parent application by serial number.

Appropriate correction is required.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 2-6,35, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

For claim 2, it is not clear what is meant by reciting that the "sponsor data" is a fee paid by the sponsor. The sponsor data may represent a fee, but the examiner is not clear as to what structure or steps are defined by reciting that the sponsor data includes a fee, where the fee is paid by the sponsor. No sponsor has previously been claimed and it is not clear what method step is being recited here.

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For claim 35, the examiner is not clear how two different steps are being recited as the same thing. The step of calculating the program price and the step of developing a financial hedging strategy are both claimed as being used for the price for fuel. Does this mean that both steps calculate a program price? If this is true then how does using the program price for fuel constitute a financial hedging strategy as claimed? This is not clear.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-7,9,11-21,23,25-30,85-114, are rejected under 35 U.S.C. 102(e) as being anticipated by McCall et al. (6321984).

For claims 1,7,11-14,15,21,25-28,29,30,85-114, McCall discloses a system and method for determining a program price for fuel. The program price is the discounted price that is given to customers that are members of an incentive program. The processor is 204 and memory (i.e. 206) stores program data and usage data. The step of receiving usage data is satisfied by the receiving and storing of data relating to how much the customer has purchased (either in dollars or volume amounts). The program sponsor data is the kind of incentive program the customer is using, for example, is the

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customer a member that gets a fixed amount discount, such as 10% for every fuel purchase, or is the customer entitled to discounts once certain criteria thresholds are met (certain dollar amounts or volume amounts have been achieved). The calculating of the program price is done when the system determines who the customer is and retrieves their customer records from the database to determine what kind of discount the customer is entitled to (if any). The guaranteeing of the program price is inherent to McCall. Clearly if a business offers an incentive program such as disclosed by McCall, the intent is to honor the incentive program to further foster good customer relations and customer loyalty. If a customer purchases fuel and gets a discount, then the price has been honored as claimed. The storing of the price on the computer is in McCall because the customer purchase records are stored in the database 206. For claim 14, reciting that the price is a capped price, is still just reciting a price and is satisfied by McCall.

For claims 2,16, due to the 112 problems with this claim, McCall is considered to satisfy what is claimed. Reciting that the data is a fee, which is really just a number, is satisfied by McCall.

For claims 3-6,17-20, McCall satisfies what is claimed. As stated previously with respect to claim 2, claiming that the data is a fee, and then reciting who has paid the fee, is not further reciting any method steps or structure. The received data represents a fee, which appears to be all that is claimed.

For claims 9,23, the usage data includes things such as how much one must purchase to be able to get a discount (a quantity of fuel), in what time period the purchases and discounts are valid, and the type of fuel (vehicle fuel).

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 8,10,22,24, are rejected under 35 U.S.C. 103(a) as being unpatentable over McCall et al..

For claims 8,22, not disclosed is that the price for fuel oil is determined. Because the system and method of McCall can be used for any type of fuel (diesel, unleaded, etc.), one of ordinary skill in the art at the time the invention was made would have found it obvious to also use the method and system of McCall for fuel oil because this is

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just using the method and system of McCall for another type of fuel, which involves only routine skill in the art at best and is considered obvious.

For claims 10,24, not disclosed is that multiple prices are calculated for multiple geographic regions. Because many gas stations are franchises that are located over many geographical areas, and in view of the well known fact that local gas prices vary by geographic region, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the method of McCall for franchises that cover a wide geographical region, so that customers of all "Brand X" fuel stations can benefit from the incentive program by fostering more customer loyalty and good customer relations. This results in prices being calculated for multiple geographic regions as claimed.

10. Claims 31-84 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCall et al. (6321984) in view of "Weather futures bet will give Tucson forms a hedge against loss".

For claims 31,35,40,41,42,46,51,52,53,54,55,59-63,67,68,69,73-77,81,82,83,84, McCall discloses the invention substantially as claimed, (see the 102 rejection). McCall does not disclose using the usage data and sponsor data to develop a financial hedging strategy that can diminish the risk associated with the program price for fuel. The "Weather futures" article discloses the well-known concept of looking to the future to help protect against unnecessary losses due to factors that could be predicted to some extent. The article discloses that a natural gas company can "hedge" itself against lost

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revenues if a warm winter cuts sales. A hedging strategy for fuel is very old and well known, for example the futures market for oil. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the data on usage and program data to develop a financial hedging strategy to help prevent foreseeable losses. In the fuel market, any kind of extreme weather changes, or changes due to OPEC, impact the prices in the fuel markets. Developing a strategy that can predict upcoming conditions in the market so that you don't offer too low of fuel prices for the incentive program can protect against losses when the price for fuel goes up considerably and you are taking losses due to too liberal of an incentive program.

For claim 55, in addition to that immediately above, the step of "determining a market indicator relevant to the future price" is what you do when you are developing a financial hedging strategy involving the sale of fuel. You are inherently looking to market indicators that are relevant to the future price for the fuel.

For claims 32,43,56,70, due to the 112 problems with this claim, McCall is considered to satisfy what is claimed. Reciting that the data is a fee, which is really just a number, is satisfied by McCall.

For claims 33,34,44,45,57,58,71,72, McCall satisfies what is claimed. As stated previously with respect to claim 2, claiming that the data is a fee, and then reciting who has paid the fee, is not further reciting any method steps or structure. The received data represents a fee, which appears to be all that is claimed.

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For claims 37,48,64,78, the usage data includes things such as how much one must purchase to be able to get a discount (a quantity of fuel), in what time period the purchases and discounts are valid, and the type of fuel (vehicle fuel).

For claims 36,47, not disclosed is that the price for fuel oil is determined. Because the system and method of McCall can be used for any type of fuel (diesel, unleaded, etc.), one of ordinary skill in the art at the time the invention was made would have found it obvious to also use the method and system of McCall for fuel oil because this is just using the method and system of McCall for another type of fuel, which involves only routine skill in the art at best and is considered obvious.

For claims 38,49,65,79, not disclosed is that multiple prices are calculated for multiple geographic regions. Because many gas stations are franchises that are located over many geographical areas, and in view of the well known fact that local gas prices vary by geographic region, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the method of McCall for franchises that cover a wide geographical region, so that customers of all "Brand X" fuel stations can benefit from the incentive program by fostering more customer loyalty and good customer relations. This results in prices being calculated for multiple geographic regions as claimed.

With respect to claims 39,50,66,80, not disclosed is that the hedging strategy includes purchasing futures for fuel. The idea of purchasing "futures" in the fuel market is notoriously old and well known. This is a way to try to predict what the market price for fuel is going to be in the future, hence the name "futures". It would have been very

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obvious to one of ordinary skill in the art at the time the invention was made to have the hedging strategy include "futures" purchases as is well known in the art as a way to protect one from predicted rising prices for fuel.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is 571-272-6808. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DENNIS RUHL
PRIMARY EXAMINER